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Security Council

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Letter dated 18 December 2008 from the Secretary-General addressed to the President of the Security Council

I attach for your information a letter dated 10 December 2008 from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (see annex).

Judge Byron seeks waivers from and amendments to the statute of the International Tribunal so that it may continue to downsize and at the same time complete both ongoing and new trials.

I would be grateful if you could bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

08-66577 (E) 160109

Annex

Letter dated 10 December 2008 from the President of the International Criminal Tribunal for Rwanda to the Secretary-General

I respectfully request that you transmit the present letter to the President of the Security Council for consideration and necessary action. The purpose of this letter is to request a waiver from several provisions in the statute of International Criminal Tribunal for Rwanda to enable it to continue downsizing and at the same time to complete the ongoing and new trials during 2009. Specifically, I respectfully request consideration of the following three issues:

(a) Increase, from 1 January to 31 December 2009, the maximum number of ad litem judges to serve at the Tribunal at any one time from 9 to 12;

(b) The possibility for the section of a Trial Chamber to sit in any particular case to be composed of ad litem judges only;

(c) The permission for judges whose term is coming to an end to take on another judicial or quasi-judicial position while they finalize the judgement-writing phase of their remaining cases for the Tribunal.

I respectfully request the Security Council to address these three issues in a Security Council resolution.

Rationale and requested action

The attached statistical grid shows (see attachment 1) that the anticipated workload during 2009 is at least as high as it has been since the commencement of the Tribunal. This new and anticipated workload, involving 10 new cases, was created by the denial of the Prosecutor's request to refer four cases to Rwanda and one case to the Netherlands. In addition, a retrial was ordered by the Appeals Chamber and a contempt of court case is pending trial. Finally, three high profile accused individuals have been transferred to the Tribunal for trial in 2008. At the same time, as shown in attachment 2, three judges (two permanent and one ad litem) will resign by the end of 2008, and four more (three permanent and one ad litem) have announced their intention to resign once their ongoing cases are completed. They are not available to take on new cases. Four new ad litem judges will be required to take on the work of the 10 new cases. Since the current judges will finalize their ongoing work between 1 January and 31 December 2009, and new cases will commence concurrently, the number of ad litem judges will exceed the statutory maximum of nine (article 11 (1) of the statute), by three.

The Security Council is therefore respectfully requested to allow for a temporary waiver of the maximum number of nine ad litem judges foreseen in article 11 (1) of the statute to a maximum of 12 at any one time, between 1 January and 31 December 2009.

Two permanent judges leave the Tribunal by the end of 2008. Three more have announced their intention to resign once the work on their ongoing cases is finished. Only four permanent judges are, within the limits of their ongoing workload, available to take on new cases. Currently, article 11 (2) of the statute of the Tribunal requires that trial panels be composed of both permanent and ad litem judges. A

waiver from the requirement of a permanent judge to be included in all trial sections will be essential to enable the Tribunal to handle its workload next year with the available resources.

The Security Council is therefore respectfully requested to allow for a waiver of the provision in article 11 (2) of the statute of the Tribunal.

Currently, the terms and conditions of the judges referred to in Article 12 bis (3) of the statute of the Tribunal, which, in turn, refers to the Statute of the International Court of Justice exclude any other occupation of a professional nature during the service at the Tribunal. It is suggested that the President of the Tribunal be authorized, in a resolution amending article 12 bis (3), to allow a judge to take on another judicial or quasi-judicial function which does not involve political or administrative functions and which is compatible with the independence and impartiality required of a judge of the Tribunal from the time of the completion of the evidence phase in the last case of the judge in question until his or her term of office comes to an end upon delivery of the judgement.

While ongoing cases are in the judgement-writing phase, and the judges assigned to those cases have already announced that they would not be available to take on new cases, the possibility for them to engage in part-time work would be cost efficient, as remuneration and emoluments would be adapted, and would also allow them to take on new judicial or quasi-judicial positions while finalizing their work at the Tribunal. The request and permission would need to specify the occupation in question. The President of the Tribunal could only give his permission after ascertaining that it is unlikely that the other position would give rise to conflicts of interests, and that it would allow the judge to fully comply with his obligations to the Tribunal. Moreover, if an issue of conflicting interest should arise, it follows from the current rules that the Presiding Judge of the relevant Trial Chamber, *motu proprio*, or upon a complaint, must address the matter and that that decision can be appealed to the Bureau. The proposal corresponds to the permissible practice, for example, at the International Court of Justice and at the Extraordinary Chambers in the Courts of Cambodia.

The Security Council is therefore respectfully requested to authorize the President of the Tribunal accordingly.

The Tribunal intends to start several of the 10 new trials in January and February 2009. This requires that the additional ad litem judges be appointed as soon as possible and that benches of three ad litem judges be designated for these trials. Therefore, I respectfully ask you to treat this matter with urgency so that the Security Council can consider the proposals set out above before the end of 2008.

Dennis **Byron**
President of the International Criminal Tribunal for Rwanda

Attachment 1

Anticipated workload of the International Criminal Tribunal for Rwanda: 2009

	Courtroom I	*Courtroom II*	*Courtroom III*	*Courtroom IV*
January 2009	Muvunyi (retrial) Prosecution and Defence (12-23 Jan.), 2 weeks			
	Kalimanzira Defence (from 26 Jan.), 2 weeks	Hategekimana Prosecution (from 26 Jan.), 3 weeks		
February 2009	Kalimanzira Defence (until 6 Feb.)	Hategekimana Prosecution (until 13 Feb.)	Nshogoza Prosecution (2-13 Feb.), 2 weeks	
	Karemera et al. Defence (from 9 Feb.), 30 weeks		Military II — recall of witnesses (from 16 Feb.), 3 weeks	Setako Prosecution (from 16 Feb.)
		Butare — recall of witnesses (from 23 Feb.), 3 weeks		
March 2009	Karemera et al. Defence (until 6 March)	Butare — recall of witnesses (until 13 March)	Military II — recall of witnesses (until 6 March)	Setako Prosecution (until 6 March)
	Break: 2 weeks		Nshogoza Defence (9-20 March), 2 weeks	Kanyarukiga Prosecution (from 9-27 March), 3 weeks
	Karemera et al. Defence (from 23 March)		Ntawukulilyayo Prosecution (from 30 March), 4 weeks	Nzabonimana Prosecution (from 30 March), 3 weeks
April 2009	Karemera et al. Defence (1-8 April)		Ntawukulilyayo Prosecution (until 3 April)	Nzabonimana Prosecution (until 9 April)
		Hategekimana Defence (from 6 April), 3 weeks	*Break: 6-26 April*	
	Break: 1 week (Easter)	*Break: 1 week (Easter)*		*Break: 1 week (Easter)*
	Karemera et al. Defence (from 20 April)	Hategekimana Defence (from 20 April until 1 May)	Ntawukulilyayo Prosecution (from 27 April)	Nzabonimana Prosecution (until 24 April)

	Courtroom I	*Courtroom II*	*Courtroom III*	*Courtroom IV*
May 2009	Karemera et al. Defence (4-29 May)	Ngibaratware Prosecution (4-29 May), 4 weeks	Ntawukulilyayo Prosecution (until 15 May)	Setako Defence (from 4 May), 6 weeks
	Two week break for Security Council address		Bagaragaza Prosecution (from 18 May), 3 weeks	
June 2009	Karemera et al. Defence		Bagaragaza Prosecution (until 5 June), 3 weeks	Setako Defence (until 12 June)
		Kanyarugika Defence (8-26 June), 3 weeks	Nzabonimana Defence (8-26 June)	
		Ngibaratware Defence (from 29 June), 4 weeks	Ntawukulilyayo Defence (from 29 June), 4 weeks	
July 2009	Karemera et al. Defence	Ngibaratware Defence (until 24 July)	Ntawukulilyayo Defence (until 24 July)	
August 2009	*2-week judicial recess*	*Judicial recess*	*Judicial recess*	*Judicial recess*
	Karemera et al. Defence	Bagaragaza Defence (10-29 August), 3 weeks	Gatete Prosecution (from 10 August), 4 weeks	Munyakazi Prosecution (from 10 August), 4 weeks
September 2009	Karemera et al. Defence		Gatete Prosecution (until 4 September)	Munyakazi Prosecution (until 4 September)
October 2009	Karemera et al. Defence (until 23 October)		Gatete Defence (5-30 October), 4 weeks	Munyakazi Defence (5-30 October), 4 weeks
November 2009				
December 2009				

Attachment 2

Judges who have already resigned or intend to resign in 2009 and will take no further cases

Judge	*Status*	*Resignation or intended resignation*	*Work to be completed in 2009*	*Replacement*
Weinberg	P	December 2008		Ad litem Judge 1
Reddy	P	December 2008		Ad litem Judge 2
Fremr	AL	December 2008		Ad litem Judge 3
Møse	P	After *Setako*	*Nsengimana*: judgement drafting (delivery projected for mid-2009)	
			Renzaho: judgement drafting (delivery projected for spring 2009)	
			Setako: completion of evidence (May 2009) and judgement drafting (delivery projected for end 2009)	
Egorov	P	After *Setako*	*Nsengimana*: judgement drafting (delivery projected for mid-2009)	
			Renzaho: judgement drafting (delivery projected for spring 2009)	
			Setako: completion of evidence (May 2009) and judgement drafting (delivery projected for end 2009)	
De Silva	P	March 2009 (after closing arguments *Military II*) with special provisions for non-resident judgement writing	*Rukundo*: judgement drafting (delivery projected for mid-2009)	
			Military II: recall of some witnesses and closing arguments (February and March 2009) and judgement drafting (delivery projected for end 2009)	
Short	AL	January 2009, with special provisions for non-resident judgement writing	*Bizimungu*: judgement drafting (delivery projected for second half 2009)	Ad litem Judge 4

Attachment 3

Benches: 2009

New cases	*Presiding Judge*	*Judge*	*Judge*	*Scheduled start of trial*
Nshogoza	Khan	Muthoga	Ad litem Judge 4	February 2009
Ntawukulilyayo	Khan	Muthoga	Ad litem Judge 4	April 2009
Muvunyi	Byron	Joensen	Ad litem Judge 1	January 2009
Hategekimana[a]	Arrey	Ad litem Judge 3	Ad litem Judge 1	January 2009
Nzabonimana	Ramaroson	Hikmet	Ad litem Judge 2	April 2009
Kanyarugika[a]	Bossa	Park	Ad litem Judge 3	March 2009
Ngibaratware	Sekule	Ad litem Judge 3	Ad litem Judge 2	May 2009

Ongoing trials	*Presiding Judge*	*Judge*	*Judge*	*Scheduled end of evidence*
Kalimanzira	Byron	Kam	Joensen	January 2009
Karemera	Byron	Kam	Joensen	October 2009
Setako	Møse	Egorov	Arrey	May 2009

Judgement drafting	*Presiding Judge*	*Judge*	*Judge*	*Projected delivery*
Bizimungu	Khan	Short	Muthoga	End 2009
Renzaho	Møse	Egorov	Arrey	First half 2009
Nsengimana	Møse	Egorov	Arrey	First half 2009
Rukundo	De Silva	Park	Hikmet	First half 2009
Butare	Sekule	Ramaroson	Bossa	End 2009
Military II	De Silva	Park	Hikmet	End 2009

Possible additional new cases[b]	*Presiding Judge*	*Judge*	*Judge*	*Scheduled start of trial*
Munyakazi				August 2009
Gatete				August 2009
Bagaragaza				May 2009

[a] Benches with three ad litem judges.
[b] The Prosecutor is considering the option of a new request for referral under rule 11 bis of the statute of the Tribunal for these three cases.